

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
Misc. Civil Appln.918/2007 (Review) in S.A. 179/2005
Ambadas Annaji Sukale
Vs.
Rekha Ambadas Sukale

Office Notes, Office Memoranda of Coram
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's Orders

CORAM : **A.P. LAVANDE, J.**
DATED : 23rd **NOVEMBER 2007**

Heard Ms. Jawalkar, learned counsel for the
applicant.

By this application, the applicant/original
plaintiff seeks review of order dated 20th December,
2006 passed by this Court in Second Appeal No.
179/2005 dismissing the appeal filed by the applicant
against judgment and decree dated 3/12/2004 passed
by Additional District Judge, Khamgaon in Regular
Civil Appeal No. 15/2002 allowing the appeal filed by
the respondent against judgment and decree dated
17.1.2002 passed by Civil Judge, Senior Division,
Khamgaon in Hindu Marriage Petition No.65/1995.

The petition for divorce filed by the applicant
was granted by the trial Court on the ground that he

had established desertion by respondent for more than two years. The lower Appellate Court reversed the decree holding that the plaintiff had not been able to prove desertion on the part of the respondent for more than two years. This Court by order dated 20th December, 2006 dismissed the appeal after hearing both sides holding that the finding recorded by lower Appellate Court could not be said to be perverse and, therefore, no interference was called for in exercise of jurisdiction under Section 100 of the Code of Civil Procedure. This Court also held that no substantial question of law was involved in the said appeal.

Mrs. Jawalkar placing reliance upon judgment of the Apex Court in 2006(1) [Mh.L.J.10](#) (Durga Prasanna Tripathy Vs. Arundhati) submitted that the marriage between the parties is irretrievably broken down and, therefore, this is a fit case in which divorce deserves to be granted. She further submitted that the finding of the lower Appellate Court that the plaintiff-applicant had not been able to prove desertion for more than two years is a perverse finding and, therefore, interference is called for in the judgment passed by the lower Appellate Court. She, therefore, submitted that the application for review

be allowed and second appeal filed by the applicant be admitted.

Having considered the submissions made by learned counsel for the applicant and having perused the records, I find no merit in the present application. Insofar as judgment in Durga Prasanna Tripathy's case (supra) relied upon by the applicant is concerned, the Apex Court granted divorce on the ground an irretrievable breakdown of marriage relying upon earlier judgments of the Apex Court. Irretrievable breakdown of marriage is not a ground for seeking divorce under Hindu Marriage Act under which the plaintiff had claimed relief. In my opinion, in the absence of any such ground, this Court has no jurisdiction to grant decree of divorce. It is settled law that the Apex Court can grant appropriate relief in exercise of powers under Article 142 of the Constitution of India, which is only available to the Apex Court.

Insofar as the submission made by Mrs. Jawalkar that the finding given by lower Appellate Court that the plaintiff has not proved desertion is perverse is concerned, the same has no merit. This Court had already recorded the finding in its order

dated 20th December, 2006 that the said finding is not perverse. In exercise of review jurisdiction, this Court cannot reverse the finding of fact recorded while passing an order, review of which is sought. I, therefore, finding no merit in the said submission.

For the reasons aforesaid, I find no merit in the application. Hence, the application is rejected.

JUDGE

MLA